

w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED
DATE <u>6-30-11</u>
<u>3:19</u> o'clock <u>7</u> .M.
Sandra K Markham, Clerk
BY: <u>RHONDI HAGEN</u>
Deputy

DIVISION PRO TEM B

SANDRA K MARKHAM, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: June 30, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(Defendant)

(For Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:

NATURE OF PROCEEDINGS

COURT REPORTER

JURY TRIAL / AGGRAVATED CIRCUMSTANCE PHASE

Mina Hunt

START TIME: 1:36 p.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin and Defendant are present.

Counsel are advised that the Jury is at an impasse. State moves the Court to offer assistance pursuant to Rule 22.4. Discussion ensues. Counsel are provided copies of the most recent 2011 RAJI instruction. State agrees to provide the further instruction to the Jury.

Counsel for Defense moves the Court to strike Aggravated Circumstance Nos. 1 and 3 based on prior argument and today's note from the Jury. State objects and renews its motion to provide the further instruction.

The Court **denies** Defense's oral motion. Defense Counsel agrees to provide the Jury with the further instruction.

~~~~~

At 2:13 p.m. the trial reconvenes with all previously appearing parties present. The Jury is not present.

Counsel are advised that the Jury does not wish further instruction from the Court. Defense Counsel moves the Court to return the Jury to the courtroom and inquire whether they wish to proceed with further deliberation.

~~~~~

At 2:41 p.m. Counsel are advised that the Jury is deadlocked. The Court will return the Jury to the courtroom. Both Counsel agree.

~~~~~

At 2:58 p.m. the Jury is returned into the courtroom in the custody of the bailiff, in the presence of Counsel and Defendant and the following Verdicts are read, filed and entered in the record:

**AGGRAVATING CIRCUMSTANCE VERDICTS:**

|                           |                                                                                                                                                                                                                                                  |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COUNT I – KIRBY BROWN     | No. 2 The Victim, or if the victim has died as a result of the conduct of the Defendant, the victim's immediate family suffered emotional harm.<br>PROVEN                                                                                        |
| COUNT II – LIZBETH NEUMAN | No. 2 The Victim, or if the victim has died as a result of the conduct of the Defendant, the victim's immediate family suffered emotional harm.<br>PROVEN<br><br>No. 3 The Defendant was in a unique position of trust with the victim<br>PROVEN |
| COUNT III – JAMES SHORE   | No. 2 The Victim, or if the victim has died as a result of the conduct of the Defendant, the victim's immediate family suffered emotional harm.<br>PROVEN                                                                                        |

Counsel waive polling of the individual jurors.

The Court addresses the Foreman of the Jury regarding those verdicts that the Jury was deadlocked and the Foreman of the Jury confirms as follows: Verdict Count I, Kirby Brown, Aggravating Circumstance Nos. 1 and 3, Count II, Lizbeth Neuman, Aggravating Circumstance No. 1, Count III, James Shore, Aggravating Circumstance Nos. 1 and 3.

The Jury is released from the admonition and excused from further consideration for this case. The Jury leaves the courtroom.

The Clerk is directed to seal the original Verdicts and the name of the juror foreman shall be redacted on the filed Verdicts.

Counsel for Defense raises the issue regarding Exhibit 734. Exhibit 1136 is marked. Discussion ensues. State requests an opportunity to review the issue and then respond. State also requests that FTR Gold be provided to the State. The Court **directs** that FTR Gold recordings will be available to both Counsel.

Counsel are informed that the Court will not be able to rule on Defense's motion today.

Defense Counsel moves that any further proceedings be stayed. Counsel for Defense moves that any documents regarding the probation department be sealed. Court advises that such documents will not be filed and therefore will not be sealed.

Counsel for State requests the transcripts be made available to the State. State is advised to contact the Court Reporter regarding transcripts. State requests to inquire of Jury if they listened to Exhibit 734 and is advised that the Court will not ask that question.

The Court advises Exhibit 1136 is not admitted at this time but is of record as a post-trial exhibit.

State requests clarification of Defense's motion and defense provides a clarification.

**IT IS ORDERED** setting Sentencing on July 25, 2011 at 3:00 p.m.

**IT IS ORDERED** the Adult Probation Department shall prepare and submit a presentence report. Counsel for Defendant avows that arrangements were made with Probation Department.

State moves for Defendant to be taken into custody and the motion is **denied**. **IT IS ORDERED** confirming the existing release conditions.

Court is adjourned for the day.

**END TIME:** 3:19 p.m.

**THEREAFTER, off the record, IT IS ORDERED** all demonstrative exhibits shall be released to the submitting party.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Adult Probation Department (e)  
Court Administration  
Customer Service Supervisor, Camp Verde Superior Court Building  
Donna McQuality, Supervisor, Superior Court, Prescott  
Exhibit Clerk